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Executive Director's Desk



Amber D. Gooding

This past year has marked a period of significant progress for the agency that will have a direct impact on the quality of service the commission is able to provide the citizens of Tennessee.

Some of last year's accomplishments include:

- Refining and implementing new case processing procedures that reduce the number of days it takes to assign a case to an investigator;
- Revising the mediation program, making it more effective, ultimately, affording its participants quicker resolutions;
- Hiring additional staff in various areas of the agency, increasing the staff's productivity;
- Redesigning the agency's web site, providing useful information to its visitors and making available electronic complaint forms that can be completed on line and downloaded; and,
- Providing additional training to the investigators and administrative staff to ensure that their skill levels remain high.

I am very optimistic about the future of the agency and its ability to accomplish its mission, which is to safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, disability, age, familial status or national origin.

In closing, I would like to invite you to visit our web site and learn more about the agency and the services provided. We will be happy to speak with your group or organization on your employment and housing rights,

General Counsel's Corner



Scott J. Mayer

Retaliation is perhaps the most overlooked, yet potentially dangerous, area of discrimination law. Both the Tennessee Human Rights Act (THRA) and federal laws prohibiting discrimi-

nation in housing and employment also prohibit retaliation by a person against an individual who has engaged in a "protected activity." Protected activity includes opposing a practice declared discriminatory by the THRA, as well as filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the THRA. Simply put, if an individual exercises their rights under the THRA, they are not to be retaliated against.

In order to maintain a case of retaliation, claimants must generally show that they en-

gaged in a protected activity, that they suffered an adverse action, and that the adverse action was taken because of the protected activity. Notably, the adverse action complained of must be a significant one that materially changes the terms or conditions of the claimant's tenancy or employment, as Courts have repeatedly determined that actions that are *de minimis* or trivial are not prohibited retaliatory actions. Furthermore, the protected activity in question must be covered by the THRA. Retaliating against someone who has filed an OSHA complaint or a

“whistleblower” lawsuit, while prohibited by other laws, does not violate the THRA and will not support a claim of retaliation.

Of particular importance is the fact that the underlying complaint that led to the retaliation does not have to be successful in order for a claimant to maintain a retaliation claim. For example, a female tenant who files a sexual harassment complaint against her landlord for repeatedly asking her out will probably not prevail. However, if the landlord then evicts the tenant for alleged violations of rules that were never enforced before her harassment complaint was filed, the landlord has likely violated the THRA’s anti-retaliation provision. In this case, the tenant has participated in a THRA proceeding by filing a housing discrimination complaint. Though unsuccessful, the complaint constitutes a protected activity, and the eviction constitutes the adverse action. If the landlord is subsequently asked to provide a reference for that tenant, and he provides a negative reference because of the prior complaint, he has likely violated the law again.

Retaliation can also result from opposition to a discriminatory practice. For instance, an apartment office manager who refuses to comply with his supervisor’s orders not to rent a unit to a mixed race couple is opposing a discriminatory practice. If that manager is subsequently demoted because he disregarded his supervisor’s demand, he has a valid claim of retaliation. In this case, the protected activity is the manager’s refusal to violate the THRA’s housing discrimination provisions, and the adverse action is the demotion. If, however, the manager is only “written up” for insubordination, he would likely not have a successful claim of retaliation, as disciplinary write ups are generally not considered adverse actions.

Protected activity is not a license to engage in misconduct, and the mere fact that an adverse action happened after a protected activity does not mean that it happened because of that activity. In both examples above, the individuals claiming retaliation have to establish that they were retaliated against *because of* the protected activity. If the tenant was several months

behind on her rent, she would likely not be able to show that the true reason for her eviction was retaliation, irrespective of the fact that she complained about harassment. Similarly, if the apartment manager had embezzled money from his employer, he would be hard pressed to show that his demotion was in retaliation for opposing discrimination. The THRA’s anti-retaliation provisions in no way prohibit landlords or employers from taking legitimate adverse action against their tenants or employees, so long as those actions are not retaliatory.

A retaliation complaint, like any other THRA claim, must be filed with the Commission within 180 days of the alleged retaliatory action. Damages available for claimants successfully establishing retaliation include reinstatement, back pay, and damages for embarrassment and humiliation, among others. If you believe that you have been the victim of retaliation for exercising your rights under the THRA, contact the Tennessee Human Rights Commission for assistance.

Mediation Highlights— Over \$620,000 Realized in Complaints Resolved Through Mediation

The THRC’s renewed dedication to its once stalled mediation program has resulted in success for both the agency and parties who utilized the program. In fiscal year 2004, the THRC resolved fifty-seven employment and housing complaints through mediation, obtaining over \$620,000 in monetary resolutions for the charging parties. This total more than doubles the agency’s figures from the previous year, securing only \$260,855 in settlements for charging parties.

A significant benefit of mediation is that it allows for more flexible terms than may be available through a judicial or administrative route. With the assistance of the mediator, the parties establish the terms, and as long as the terms are legal, they become part of the agreement. Below are examples of the types of settlements/agreements reached in last year’s mediations.

In the area of employment and public accommodation:

- Back pay recovered
- New hires
- Job reinstatements

- Remedial relief given
- Compensatory relief given
- Attorneys’ fees paid

In the area of housing:

- Structural modifications made
- Compensatory relief given

Mediation is offered by the THRC early in the complaint process in an effort to reach a resolution before an investigation

ensues. Although the staff encourages mediation, it is completely voluntary. More importantly, the mediation process is strictly confidential. Unlike an administrative law judge, the mediator does not resolve the charge or impose a decision on the parties. Rather, the mediator serves as a neutral third party facilitator, helping the parties to arrive at a mutually acceptable agreement.

The executive director, Amber Gooding, offered, “I am pleased with the how the program is progressing. The numbers demonstrate the staff’s dedication and that our program has boundless potential. Last year, less than one percent of the agency’s cases were resolved through mediation. Generally speaking, it takes far less time to resolve a complaint through mediation, than it takes to go through the THRC’s traditional investigative process.” When asked about the future of the program, Gooding added, “We’re going to continue to promote the program. After all, everybody comes out a winner in mediation.”

For more information on the THRC’s mediation program, visit the agency’s web site or contact your nearest THRC office.



“We’re going to continue to promote the program. After all, everybody comes out a winner in mediation.”

Amber Gooding
THRC’s Executive Director

The THRC Sponsors a Statewide Effort to Address the Disability Communities' Housing Needs

In September the Executive Director, Amber Gooding, and members of



Amber Gooding, THRC's Executive Director, welcomes the conference attendees at the Johnson City site.

the THRC's staff crisscrossed the state spreading its message of anti-discrimination in housing, tailoring its presentations to address the housing needs of people with disabilities. The conferences, dubbed 'The Traveling Road Show', were held in Johnson City, Chattanooga, Nashville, Memphis and Jackson.

Tracey McCartney, the Executive Director of the Tennessee Fair Housing Council, and Carol Gish, the Managing Attorney for West Tennessee Legal Services, both authorities on and advocates of people's fair housing rights, lead discussions. The topics included: disability protection under the Fair Housing Act, the types of discriminatory acts normally committed against those with disabilities, design and construction requirements, reasonable modification requirements and examples, reasonable accommodation requirements and examples, enforcement issues, NIMBYism, and a discussion on myths and truths, as it relates to crime and property value when, for example, a group home for people with disabilities is placed in a neighborhood.

Gregory Fisher, Director of Housing and Homeless Services for the Department of Mental Health and Developmental Disabilities, and Mary McLennan, Chief of Planning for the Tennessee Housing Development Agency (THDA), assisted in the planning and coordinating efforts to ensure that the conferences provided a unique prospective on how to creatively provide housing for those in need.

Fisher, who oversees the Real Choice Systems *Change Housing Within Reach* project and the *Creating Homes Initiative (CHI)*, gave real life scenarios of



Panel discussion on NIMBYISM at the Nashville conference site.

position he has witnessed and had to overcome in trying to establish housing for the homeless and people with disabilities. Additionally, he coordinated and scheduled SETH facilitators to talk about their role in creating and implementing support for people with chronic mental illness in rural counties. The Seth facilitators were: Cherè Bradshaw (Memphis), Jeanne Price (Johnson City), and Lisa Morris (Chattanooga).

McLennan provided informational packets on THDA's homeownership programs and Development District representatives to discuss the THDA's

programs and creative ways of funding housing. The speakers were: Mark



Attendees look on at the Chattanooga conference site.

Cranford, Southeast Tennessee Development District (Chattanooga) and Retha Patton, First Tennessee Development District (Johnson City).

THRC Chairman Spencer Wiggins, and Commissioners Patricia Hammonds, Robin Smith, Yusuf Hakeem, Samuel Kyles and Stacey Garrett welcomed the conference participants in their respective cities.

Scott Mayer, THRC's General Counsel and Shay Rose, the Associate General Counsel, lead discussions on the Tennessee Human Rights Act (THRA), Tennessee's antidiscrimination statute, and how the state's laws differ from the federal fair housing laws.

The conferences were well attended with over two-hundred attendees statewide. The audiences were made up of landlords, caregivers, advocacy groups, professionals in the housing industry and the general public.

For information on your fair housing rights or to have a THRC representative speak to your group, call Cynthia Howard at (615) 253-1608 to schedule.

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1-800-325-9664

THE HUMAN RIGHTS MONITOR

Toll Free
1-800-251-3589

If you would like more information on your rights, the federal and state laws that protect you or would simply like to have a member of our staff speak to your group or organization, contact Cynthia Howard at 615-253-1608.

We hope you have enjoyed the THRC's newsletter. You can receive future copies by simply forwarding your email address to:
Cynthia.howard@state.tn.us

Visit Our Web site
www.state.tn.us/humanrights

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TENNESSEE HUMAN RIGHTS COMMISSION

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Staff Highlights—

Ritchie Patton's career has gone full circle—from investigating complaints of discrimination to responding to charges and back again.



Before leaving the THRC for the private sector, Patton served thirteen years as an employment investigator. Following that, he served with the Tennessee State Employees Association (TSEA) as an Employee Rights Coordinator. He has also worked with Shoney's Inc. and the Administaff Services Corporation as their corporate EEO compliance specialist, answering charges and preparing position statements for the EEOC and state and local agencies like the THRC.

Patton earned a bachelor's degree in political science from Tennessee State University.

He will continue his work as an employment investigator with the THRC, investigating charges of discrimination in employment and public accommodation.



The THRC is please to have **Tricia Clark** return to investigating complaints of discrimination in housing, employment, and public accommodation.

Clark, who had previously served seven years as an employment and housing investigator with the THRC, was re-

cruited by the United States Secret Service in 2003 to serve as a special agent.

After a successful tour with the Secret Service, Clark made the decision to return to the THRC.

She earned a bachelor's degree in English and a master's degree in Sociology from East Tennessee State University.

She is married and has a three- year-old daughter, Samantha.

Patricia Ladd joined the staff of the THRC in



September as a legal assistant. She will be responsible for reviewing and approving investigative case files, conducting legal research, preparing legal memorandums and documents, maintaining records and reports, coordinat-

ing mediations and conciliations, and assisting the legal department with legal proceedings and consultations.

Prior to joining the agency, Ladd served as a paralegal in two prominent law offices in the middle Tennessee area.

Ladd earned a Bachelor of Arts Degree In Management from Trevecca Nazarene University in 2001, an A.A. S. in Health Information Technology in 2003, and an A. A. S. in Paralegal Studies in 1998.

She has five adult children.